

_____ BILL NO. _____

INTRODUCED BY _____

(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS CONCERNING LOBBYING; EXEMPTING CERTAIN COMMUNICATIONS FROM THE DEFINITION OF LOBBYING; INCREASING THE AMOUNT OF REIMBURSEMENT AN INDIVIDUAL MAY RECEIVE FROM \$1,000 TO \$2,500 BEFORE THE INDIVIDUAL IS CONSIDERED TO BE LOBBYING AND PROVIDING FOR ADJUSTMENT OF THAT AMOUNT FOR INFLATION; PROVIDING THAT CERTAIN INDIVIDUALS MAY BE EXEMPT FROM PAYING THE LOBBYING FEE UNDER CERTAIN CIRCUMSTANCES; AMENDING SECTIONS 5-7-101, 5-7-102, AND 5-7-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, pursuant to the authority provided in section 5-7-111, MCA, the Commissioner of Political Practices adopted rules relating to lobbying and lobbying disclosure in September of 2002 finding ambiguity in what constitutes "lobbying" and "lobbying for hire"; and

WHEREAS, the Legislature wishes to continue to promote a high standard of ethics in the practice of lobbying and to require disclosure of the amounts of money spent for lobbying while at the same time allowing citizens and constituents full and complete access to the Legislature and elected officials without financial impact or burdensome regulation; and

WHEREAS, access to the Legislature and to all elected officials and free association are constitutional rights that should not be infringed upon by ambiguity or otherwise; and

WHEREAS, the Legislature finds that the objectives of Montana's lobbying laws and complete, open, and unfettered access to the Legislature by citizens and constituents are best accomplished by amending the lobbying laws to provide that certain limited activity is not considered to be lobbying for the purposes of regulation by the state.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 5-7-101, MCA, is amended to read:

"5-7-101. Purposes of chapter -- applicability. (1) The purposes of this chapter are to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices, to provide for

1 the licensing of lobbyists and the suspension or revocation of the licenses, to require elected officials to make
2 public their business, financial, and occupational interests, and to require disclosure of the amounts of money
3 spent for lobbying.

4 (2) Nothing in this chapter:

5 (a) subjects an individual lobbying on his the individual's own behalf to any reporting requirements nor
6 deprives an individual of the constitutional right to communicate with public officials; or

7 (b) deprives an individual who is not lobbying for hire of the constitutional right to communicate with
8 public officials."

9
10 **Section 2.** Section 5-7-102, MCA, is amended to read:

11 **"5-7-102. Definitions.** The following definitions apply in this chapter:

12 (1) "Business" means:

13 (a) a holding or interest whose fair market value is greater than \$1,000, in a corporation, partnership,
14 sole proprietorship, firm, enterprise, franchise, association, self-employed person, holding company, joint-stock
15 company, receivership, trust, or other entity or property held in anticipation of profit, but does not include
16 nonprofit organizations; and

17 (b) present or past employment from which benefits, including retirement allowances, are received.

18 (2) "Commissioner" means the commissioner of political practices.

19 (3) "Docket" means the register of lobbyists and principals maintained by the commissioner pursuant
20 to 5-7-201.

21 (4) "Elected official" means a public official holding a state office filled by a statewide vote of all the
22 electors of Montana or a state district office, including but not limited to legislators, public service commissioners,
23 and district court judges. The term "official-elect" also applies to the offices.

24 (5) "Individual" means a human being.

25 (6) (a) "Lobbying" means:

26 ~~(a)~~(i) the practice of promoting or opposing the introduction or enactment of legislation before the
27 legislature or the members of the legislature by a person other than a member of the legislature or a public
28 official; and

29 ~~(b)~~(ii) the practice of promoting or opposing official action by any public official.

30 (b) The term does not include:

1 (i) costs associated with providing copies of regular membership communications to elected or public
2 officials if the communications are generally provided to all similarly situated elected officials or public officials
3 in conjunction with communicating with members; or

4 (ii) an activity undertaken by a person to promote or oppose the introduction or enactment of legislation
5 or to promote or oppose action by an elected or public official if, subject to [section 4], the person's expenses
6 are less than \$2,500 in a calendar year, excluding personal and necessary living expenses for individuals.

7 (7) (a) "Lobbying for hire" includes activities of the officers, agents, attorneys, or employees of a
8 principal who are paid, reimbursed, or retained by the principal and whose duties include lobbying.

9 (b) If an individual is reimbursed only for ~~his~~ the individual's personal living and travel expenses, which
10 together are, subject to [section 4], less than \$1,000 per \$2,500 in a calendar year, that individual is not
11 considered to be lobbying for hire.

12 (8) (a) "Lobbyist" means a person who engages in the practice of lobbying for hire.

13 (b) Lobbyist does not include:

14 (i) an individual acting solely on ~~his~~ the individual's own behalf; or

15 (ii) an individual working for the same principal as a licensed lobbyist if the individual does not have
16 personal contact involving lobbying with a public official on behalf of ~~his~~ the individual's principal.

17 ~~(c) Nothing in this section deprives an individual not lobbying for hire of the constitutional right to~~
18 ~~communicate with public officials.~~

19 (9) "Payment" means distribution, transfer, loan, advance, deposit, gift, or other rendering made or to
20 be made of money, property, or anything of value.

21 (10) "Payment to influence official action" means any of the following types of payment:

22 (a) direct or indirect payment to a lobbyist by a principal, such as salary, fee, compensation, or
23 reimbursement for expenses, excluding personal living expenses; or

24 (b) payment in support of or assistance to a lobbyist or a lobbying activity, including but not limited to
25 the direct payment of expenses incurred at the request or suggestion of the lobbyist.

26 (11) "Person" means an individual, corporation, association, firm, partnership, state or local government
27 or subdivision of state or local government, or other organization or group of persons.

28 (12) "Principal" means a person who employs a lobbyist and who makes or expects to make
29 expenditures, subject to [section 4], equal to or exceeding \$2,500 in a calendar year, excluding reimbursements
30 for personal and necessary living expenses for individuals.

(13) (a) "Public official" means an individual, elected or appointed, acting in ~~his~~ an official capacity for the state government.

(b) The term does not include those acting in a judicial or quasi-judicial capacity or performing ministerial acts.

(14) "Unprofessional conduct" means:

(a) violating any of the provisions of this chapter;

(b) instigating action by a public official for the purpose of obtaining employment;

(c) attempting to influence the action of a public official on a measure pending or to be proposed by:

(i) promising financial support; or

(ii) making public any unsubstantiated charges of improper conduct on the part of a lobbyist, a principal, or a legislator; or

(d) attempting to knowingly deceive a public official with regard to the pertinent facts of an official matter or attempting to knowingly misrepresent pertinent facts of an official matter to a public official."

Section 3. Section 5-7-103, MCA, is amended to read:

"5-7-103. Licenses -- fees -- eligibility -- waiver. (1) Any adult of good moral character who is otherwise qualified under this chapter may be licensed as a lobbyist. The commissioner shall provide a license application form. The application form may be obtained from and must be filed in the office of the commissioner. Upon approval of the application and receipt of the license fee by the commissioner, a license must be issued that entitles the licensee to practice lobbying on behalf of one or more enumerated principals. The license fee is \$150 for each lobbyist. Each license expires on December 31 of each even-numbered year or may be terminated at the request of the lobbyist. A lobbyist who believes that payment of the license fee may constitute a hardship may apply to the commissioner for a waiver of the fee required by this section. The commissioner may waive all or a portion of the license fee upon proof by the lobbyist that payment of the fee constitutes a hardship. A person appearing before the legislature or a public official on a limited basis for the purpose of providing special knowledge at the request of a principal or lobbyist is not required to pay the license fee or register if the principal reports all related expenses in accordance with the reporting provisions of this chapter.

(2) (a) Except as provided in subsection (2)(b), an application may not be disapproved without affording the applicant a hearing. The hearing must be held and the decision entered within 10 days of the date of the filing of the application.

(b) An application may not be approved if a principal has failed to file reports required under 5-7-208.

(3) The fines collected under this chapter must be deposited in the state treasury.

(4) The commissioner shall deposit the license fee provided for in subsection (1) as follows:

(a) \$50 in the general fund; and

(b) \$100 in the state special revenue account provided for in 5-11-1112.

(5) The commissioner may adopt rules to implement the waiver provisions of subsection (1)."

NEW SECTION. Section 4. Adjustment of amount. The amount of \$2,500 in 5-7-102 must be multiplied by the inflation factor, as defined in 15-30-101, for each year in which general elections are held. The resulting figure must be rounded off to the nearest \$50 increment. The commissioner shall publish the revised limitations as a rule.

NEW SECTION. Section 5. Codification instruction. [Section 4] is intended to be codified as an integral part of Title 5, chapter 7, part 1, and the provisions of Title 5, chapter 7, part 1, apply to [section 4].

NEW SECTION. Section 6. Saving clause. [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. Section 7. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 8. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to all occurrences on or after September 1, 2002.

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